



Report to the Auburn City Council

Action Item
Agenda Item No. 7

City Manager's Approval

To: Honorable Mayor and City Council Members
From: Robert Richardson, City Manager
Andy Heath, Administrative Services Director
Date: January 24, 2011
Subject: Labor Relations Consulting Services Agreement

The Issue

Shall the City Council execute an agreement with Patrick Clark Consulting to provide human resources and labor negotiations consulting services as required by the City of Auburn?

Conclusions and Recommendations

By RESOLUTION, authorize the City Manager or his designee to execute a Consulting Services Agreement with Patrick Clark Consulting to provide human resources and labor negotiations consulting services through June 30, 2012 and as required by the City in an amount not to exceed \$25,000.00.

Background

Since April 2003, the City of Auburn has utilized Human Resource Practitioners (HRP) to assist with periodic labor negotiations and provide labor agreement and human resources expertise on an as-needed basis. Dave Mackowiack, the principal consultant for HRP, has informed the City of his desire to significantly reduce his availability to the City as he prepares to retire from the consulting business.

While negotiating the last labor agreement with the Auburn Police Officer's Association, HRP teamed with Patrick Clark of Patrick Clark Consulting to acquaint City management with a possible replacement for HRP in the event the City desired to continue contracting for personnel- and labor-related services. Over the course of the APOA negotiations, Mr. Clark proved to be an educated, value-added and contributing member to the City management's labor team.

Analysis

As previously referenced in this memorandum, Patrick Clark Consulting was highly recommended by the City's previous labor consultant. Having worked as chief of labor relations for the State of California Employment Development Department and having provided professional services to the El Dorado County Fire District, Placer Mosquito and Vector Control District, and the City of Colusa, among others, Mr. Clark has the skills and knowledge commensurate with assisting City management with an array of labor- and personnel-related needs.

Staff is recommending the City retain Patrick Clark Consulting for eight (8) hours each month at a rate of \$125.00 per hour until June 2012. Hours provided in excess of the monthly retainer will be charged at the rate of \$125.00 per hour. Patrick Clark Consulting has agreed to discount apply a 10% discount for all hours worked (\$12.50 per hour) while the salary reduction for City management pursuant to the Cost Savings Plan is in effect.

Alternatives Available to Council; Implications of Alternatives

1. Adopt a resolution authorizing the City Manager or his designee to execute a Consulting Services Agreement with Patrick Clark Consulting to provide human resources and labor negotiations consulting services through June 30, 2012 and as required by the City in an amount not to exceed \$25,000.00
2. Do not adopt a resolution. The City's management staff will be required to undertake and facilitate all labor negotiations and personnel issues with existing resources.

Fiscal Impact

The City Manager's Office has an appropriation of \$30,000 available during fiscal year 2010-11 for personnel-related services. Of this amount, approximately \$9,000 has been spent to date. Consulting costs relative to future fiscal years will be considered with the budget development process.

Attachment – Consulting Services Agreement with Patrick Clark Consulting

1 RESOLUTION NO. 11-
2 RESOLUTION AUTHORIZING A CONSULTANT SERVICES AGREEMENT WITH
3 PATRICK CLARK CONSULTING
4 -----

5 THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

6 That the City Council of the City of Auburn does hereby adopt a
7 resolution authorizing the City Manager or his designee to execute a Consulting
8 Services Agreement with Patrick Clark Consulting to provide human resources
9 and labor negotiations consulting services through June 30, 2012 and as
10 required by the City in an amount not to exceed \$25,000.00.

11
12 DATED: January 24, 2011

13
14 William W. Kirby, MD, Mayor

15 ATTEST:

16 Joseph G. R. Labrie, City Clerk

17
18
19 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
20 that the foregoing resolution was duly passed at a regular meeting of the City
21 Council of the City of Auburn held on the 24th day of January 2011 by the
following vote on roll call:

22 Ayes:

23 Noes:

24 Absent:

25 Joseph G. R. Labrie, City Clerk

PROFESSIONAL SERVICES AGREEMENT
(City of Auburn / Patrick Clark Consulting)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and Patrick Clark Consulting, an individual doing business as Patrick Clark Consulting ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: Human resource consulting services, including labor negotiations responsibilities, but strictly excluding any legal services.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 2.3 "Scope of Services": Such professional services as are set forth in Consultant's October 19, 2010 proposal to City attached hereto as Exhibit A and incorporated herein by this reference. Consultant's services shall include no legal advice or other legal services. City shall be responsible for the legal ramifications of all advice and documentation generated by Consultant for City's use.
- 3.1 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's November 1, 2010 fee schedule attached hereto as Exhibit B and incorporated herein by this reference.
- 3.2 "Commencement Date": February 1, 2011
- 3.3 "Expiration Date": June 30, 2012.
- 3.4 "Labor Relations": Labor Relations includes, but is not limited to, activities such as those listed under item 2 of Exhibit A.
- 3.5 "Labor Relations Program": Any effort, or collection of efforts, focused on Labor

Relations, as defined above.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Twenty Five Thousand Dollars (\$25,000.00) unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Patrick Clark, Consultant, shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under

this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule and Section 5.1 of this Agreement above.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed, including drive time, pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall pay each invoice within 30 days of its receipt. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant unless otherwise required by law.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule nor to claim payment other than in compliance with this Agreement, including Section 5.1 above.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

10.1 INDEMNITY

10.1.1 City agrees, to the fullest extent permitted by law, to indemnify, hold harmless, and defend Consultant, its employees, agents and sub-consultants (collectively, Consultant) against any and all costs, losses, liabilities, expenses (including reasonable attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any claims arising out of the performance of this Agreement, unless the claim arises from the gross negligence or willful misconduct of Consultant as determined by a court or other forum of competent jurisdiction. The City's duty to indemnify, hold harmless, and defend Consultant shall arise immediately upon tender of any matter or claim potentially covered by the City's obligation to indemnify, hold harmless, and defend Consultant under this Agreement.

10.1.2 This provision shall be in addition to any rights to defense, being held harmless, and/or indemnification that Consultant may have under the law and shall survive and remain in effect following the termination of this Agreement for any reason. Should any part of this provision be determined to be unenforceable, Consultant and City agree that the remainder of the provision shall apply to the maximum extent permitted by law.

10.2 INDEMNIFICATION THRESHOLD - The Parties agree that the City's indemnification duties described in Section 10.1 of this Agreement shall not arise unless or until Consultant's liability exceeds the policy limits associated with any coverage described in Section 11.1 below. Except, the City's duty to indemnify, hold harmless, and defend Consultant, per Section 10.1, shall still arise immediately upon tender of any matter or claim potentially covered by the City's obligation to indemnify, hold harmless, and defend Consultant under this Agreement. In addition, this Indemnification Threshold shall not apply if, at any point, it is determined that Consultant's insurance policies do not apply to any claim, demand, damage, liability, loss, cost or expense.

10.3 NO THRESHOLD FOR CLAIMS RELATED TO LABOR RELATIONS SERVICES - Consultant's services under this Agreement include professional services associated with City's Labor Relations Program (as that term is defined in Section

3 of this Agreement) with its employees and their bargaining agents. The parties understand that Labor Relations involve an inherent and significant risk of conflict and legal dispute. It is not the intention of the parties to shift from City to Consultant any responsibility for the defense of the City's Labor Relations and, in the absence of actual malice by Consultant or its officers, agents and employees, and notwithstanding any other provision of this Section, City shall be solely responsible for funding the defense of any suit and paying any other claim arising from any Labor Relations Program, per Section 10.1.

11.0 INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect the following insurance policies, or, at Consultant's sole option, policies providing equal or better coverage:
 - 11.1.1 State Farm Business Liability Policy # 90-BL-X967-5 – \$1,000,000.00 (Exhibit C)
 - 11.1.2 State Farm Auto Insurance Policy # 55-B-2697-V71 – \$500,000.00 and Umbrella Policy # 55-BQ-H282-3 - \$500,000.00 (Combined \$1,000,000.00 coverage). (Exhibit D)
 - 11.1.3 HISCOX Errors & Omissions Insurance Policy # UEA1128907.10 – 1,000,000.00 (Exhibit E)
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.
- 11.3 Consultant agrees that if it does not keep the aforesaid insurance (or equal or better coverage) in full force and effect, or reinstate such insurance within 15 days of receiving written notice from City of City's plan to exercise its rights under this Section (11.3), City may either (i) immediately terminate this Agreement; or (ii) take out the minimum insurance necessary to rectify the lapse and pay the premium(s) thereon at Consultant's expense.
- 11.4 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the policies required by this Agreement are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.
- 11.5 Consultant shall provide proof to the City's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been

renewed or replaced with other policies providing at least the same coverage at least two weeks prior to the expiration of the coverages.

- 11.6 The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds. In addition, Consultant agrees to provide thirty day's prior written notice to City of any failure to renew any such policies of insurance or to replace them with equal or better coverage.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action, to the extent consistent with all other provisions herein.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
Attn: City Manager
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x192
Facsimile: (530) 823-4216

If to Consultant:

Patrick Clark
Patrick Clark Consulting
770 L Street, Suite 950
Sacramento, CA 95814
Telephone: (916) 838-2806
Facsimile: (916) 367-6723

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono & Levin, P.C.
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024
Telephone: (530) 432-7359
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Section 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

- 17.1. Either party may terminate this Agreement for any reason upon thirty calendar days' written notice. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. ARBITRATION AND MEDIATION OF DISPUTES

18.1. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Contract shall be submitted to Judicial Arbitration & Mediation Services, Inc. (JAMS), or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the arbitration clause set forth below. Either party may commence mediation by providing to JAMS and the other party a written request for mediation setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or 45 days after the date of filing the written request for mediation, whichever occurs first. The mediation may continue after the commencement of arbitration if the parties so desire. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The provisions of this Mediation and Arbitration of Disputes provision may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

18.2. Subject to subsection 18.1 above, any dispute, claim or controversy arising out of or relating to this Contract or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in Sacramento before one arbitrator. The arbitration shall be administered by JAMS, pursuant to its Comprehensive Arbitration Rules and Procedures. Each party shall pay one-half of all arbitration costs with the understanding that the arbitrator shall, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

19. GENERAL PROVISIONS

- 20.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 20.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 20.3 The captions appearing at the commencement of the sections hereof, and in any section thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or section at the head of which it appears, the section or paragraph, and not such heading, shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 20.4 The waiver by City or Consultant of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition of this Agreement. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver.

- 20.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 20.6 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 20.7 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 20.8 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Auburn

"Consultant"
Patrick Clark Consulting

By _____
Robert Richardson, City Manager

By: _____
Patrick Clark, Principal

Date: _____

Date: _____

Attest:

By _____

Amy Lind, Assistant City Clerk

Date: _____

Approved as to form:

By _____
Michael G. Colantuono, City Attorney

Date: _____

1. Ongoing routine human resources services.
 - a. Policy revisions
 - b. Classification development/revisions
 - c. Recruitments
2. Ongoing routine labor relations services.
 - a. Contract negotiations
 - b. Contract enforcement
 - i. Grievances
 - ii. Meet and confers
 - c. Disciplinary actions
 - i. Investigations
 - ii. Notices of intent
3. Any other human resources or labor relations project requested by City Manager

- Retainer: 8 hours, at \$125.00 per hour, per month.
- Hours worked in excess of the monthly retainer shall be paid at Consultants normal hourly rate of \$125.00 per hour, in increments of 15 minutes.
- Drive time shall be considered time worked.
- Consultant agrees to a 10% discount to be applied to all hours worked by consultant due to the financial hardship the City of Auburn is experiencing. This discount shall remain in effect unless and until the salary reduction for the City management is terminated.